

LAWLER, METZGER, KEENEY & LOGAN, LLC

2001 K STREET, NW
SUITE 802
WASHINGTON, D.C. 20006

REGINA M. KEENEY

PHONE (202) 777-7700
FACSIMILE (202) 777-7763

January 12, 2010

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: GN Docket Nos. 09-29, 09-47, 09-51; RM-11358
Ex Parte Notice

Dear Ms. Dortch:

On Monday, January 11, 2010, Heather Burnett Gold, Senior Vice President of External Affairs at XO Communications, LLC ("XO"), Lisa Youngers, Vice President, Federal Affairs at XO, Richard Metzger of Lawler, Metzger, Keeney & Logan, LLC, and I met with Nicholas Alexander, Jennifer Prime, Ian Dillner, Rebekah Goodheart, and William Dever from the staff of the Federal Communications Commission. At this meeting, XO's representatives described how robust competition is critical to advancing the Commission's broadband goals, including increased broadband penetration, greater innovation, and lower prices. We explained that a competitive broadband marketplace requires efficient access to last-mile facilities and services, bottlenecks that are currently dominated by incumbent local exchange carriers ("LECs"). We also pointed to the vital importance of special access reform to affordable broadband service.

XO's representatives emphasized that today's existing, ubiquitously deployed copper infrastructure is already in place as a solution for the delivery of broadband services throughout the United States. Given its nationwide reach, copper facilities can be used for faster and more cost-effective deployment of broadband than other technologies, including the fiber facilities that currently extend to less than twenty percent of the nation's business locations. Significantly, advances in copper technology have enabled the deployment of "Ethernet Over Copper" ("EoC") technology, which supports data speeds up to 45 Mbps today and possibly greater than 100 Mbps in the future. Certainly, the cost-effective deployment of EoC promises important benefits for rural areas of the United States that have previously lacked affordable broadband access. This technology will promote regional economic development in rural areas by attracting small, medium, and large businesses that require high-speed transmission services.

We explained that incumbent LECs' premature retirement of copper plant represents a major obstacle to increased broadband access throughout the United States. To remedy these flaws, XO and other competitive LECs in 2007 petitioned the Commission to amend its Part 51 rules applicable to retirement of copper loops and copper subloops by the incumbent LECs.¹ Consistent with the arguments in this petition, we pointed out at the meeting that the Commission's existing rules regarding the retirement of copper facilities are woefully insufficient. These rules fail to address whether removing incumbent LEC copper facilities would adversely affect competition, broadband availability, homeland security, or public safety, or would otherwise be contrary to the public interest. Now, in conjunction with its national broadband strategy, the Commission should take three fundamental steps toward comprehensive reform of the copper retirement process. First, the Commission should define the "retirement" of copper facilities as the removal or dismantling of copper loops or copper subloops, including the permanent removal of these facilities from the conduit, pole attachment, or housing. Second, the Commission should establish formal case-by-case Commission review of incumbent LEC applications to retire copper loops or copper subloops, subject to a presumption that such retirement does *not* serve the public interest. Finally, the Commission should require incumbent LECs to provide written notification of copper retirements directly to all carriers that interconnect with the incumbent LECs' networks.

The attached slide presentation on these broadband issues formed the basis for our discussion at this meeting. Pursuant to section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), this *ex parte* notification and the attached presentation are being filed electronically for inclusion in the public record of the above-referenced proceedings.

Respectfully submitted,

/s/ Regina M. Keeney
Regina M. Keeney

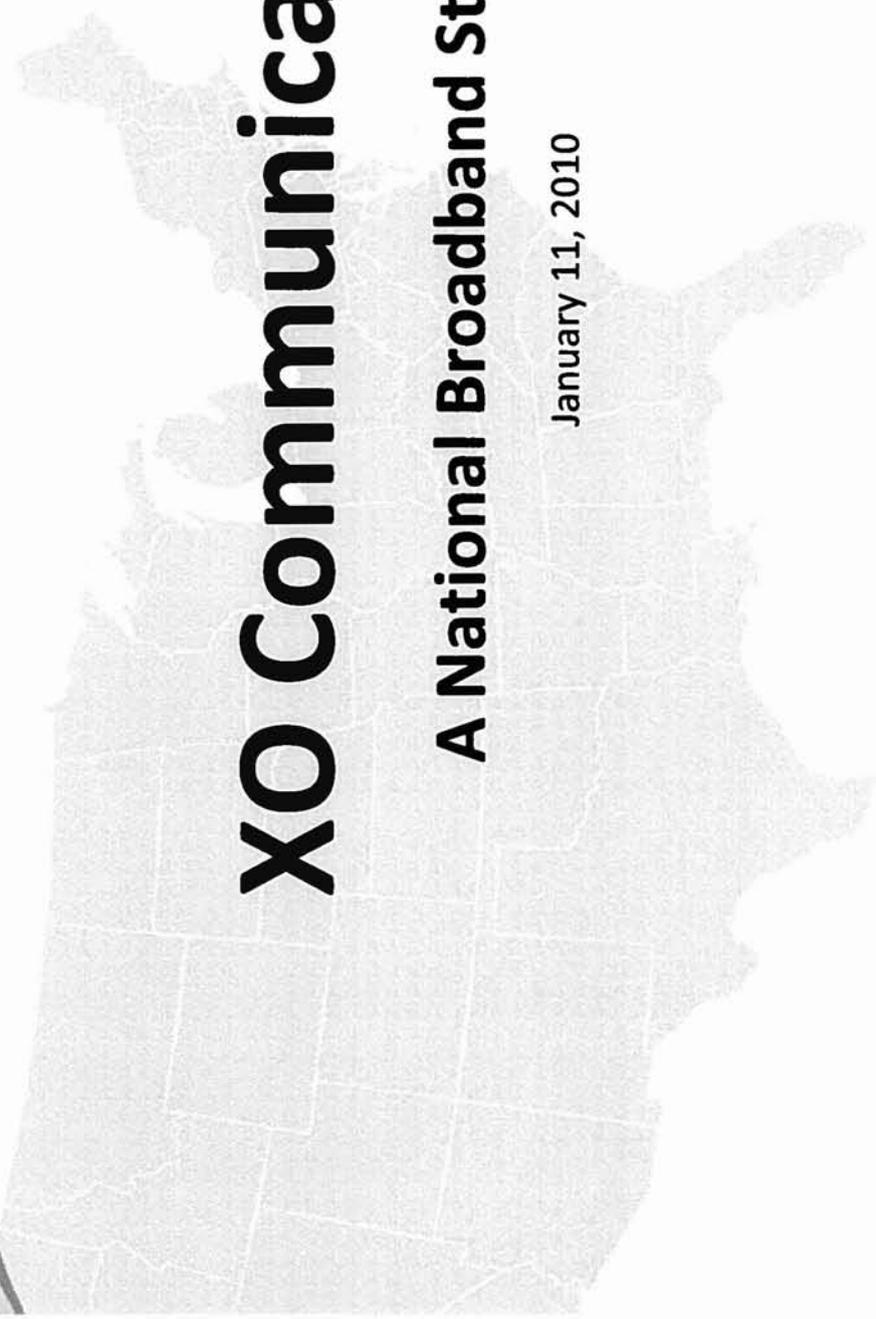
cc: Nicholas Alexander
Jennifer Prime
Ian Dillner
Rebekah Goodheart
William Dever

¹ Petition for Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops, XO Communications, LLC; Covad Communications Group, Inc.; NuVox Communications; and Eschelon Telecom, Inc., RM-11358 (Jan. 18, 2007) ("Copper Retirement Petition").

XO Communications

A National Broadband Strategy

January 11, 2010



About XO Communications

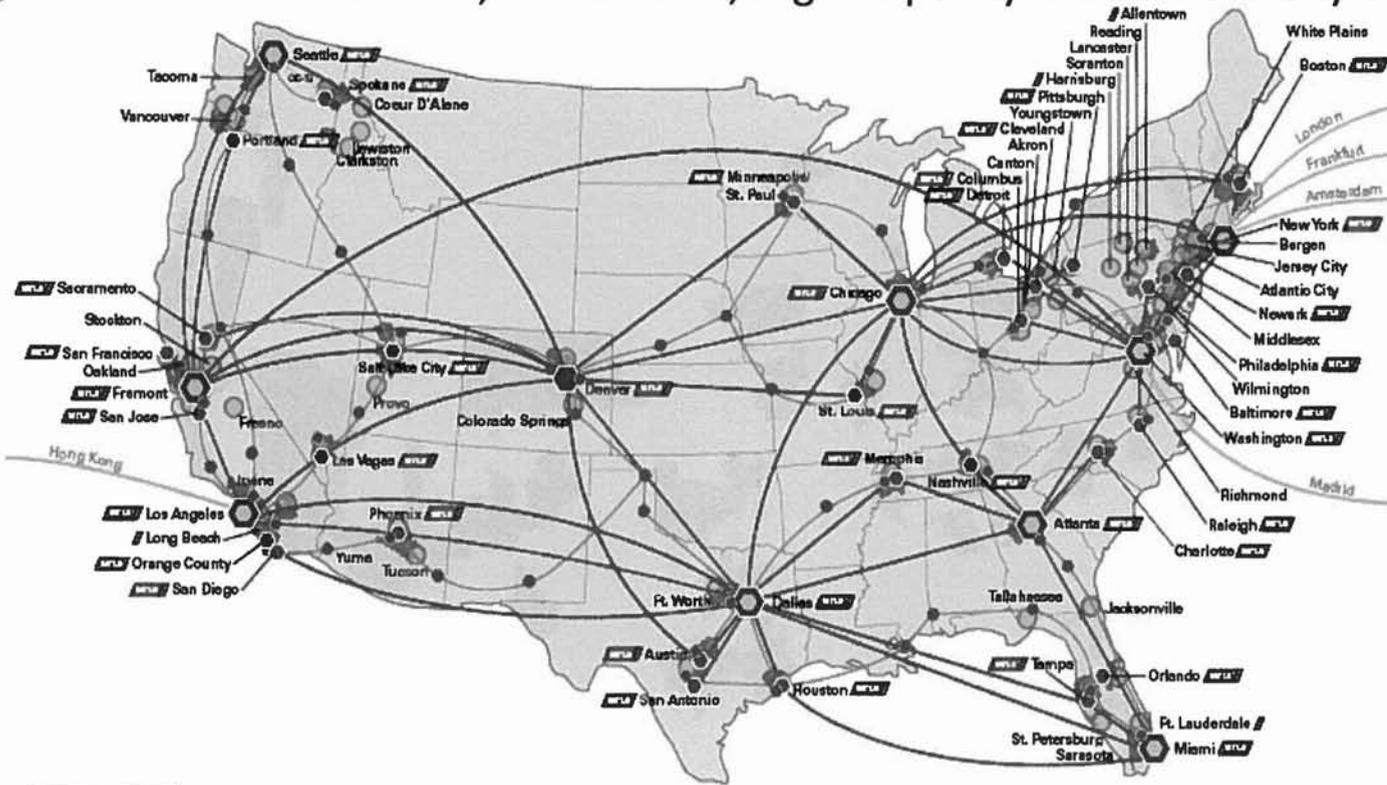


- **One of the nation's largest providers of innovative broadband and other competitive services**
- **Leading alternative for businesses - 90,000 customers - small and medium businesses and large enterprises**
- **Over \$7 billion in network investment, annual revenues of nearly \$1.5 billion, 4,000 employees**
- **Serves 75 markets in 23 states**

Broad Nationwide Reach



State of the Art, Nationwide, High-Capacity IP and Inter-City Transport Networks



FIBER ASSETS

- Terabit-Capable Nationwide IP Network
- 1.2 Terabit Inter-City Transport Network
- 18,000 Route Miles
- 75 Markets
- Reach 40% of U.S. businesses
- Robust Softswitch Platform
- >15B Minutes of VoIP Traffic Each Year

WIRELESS ASSETS

- ◆ 28 GHz-31 GHz spectrum
- ◆ Deliver 10-100 Mbps DIA and Ethernet services
- ◆ Reach locations up to 10 miles

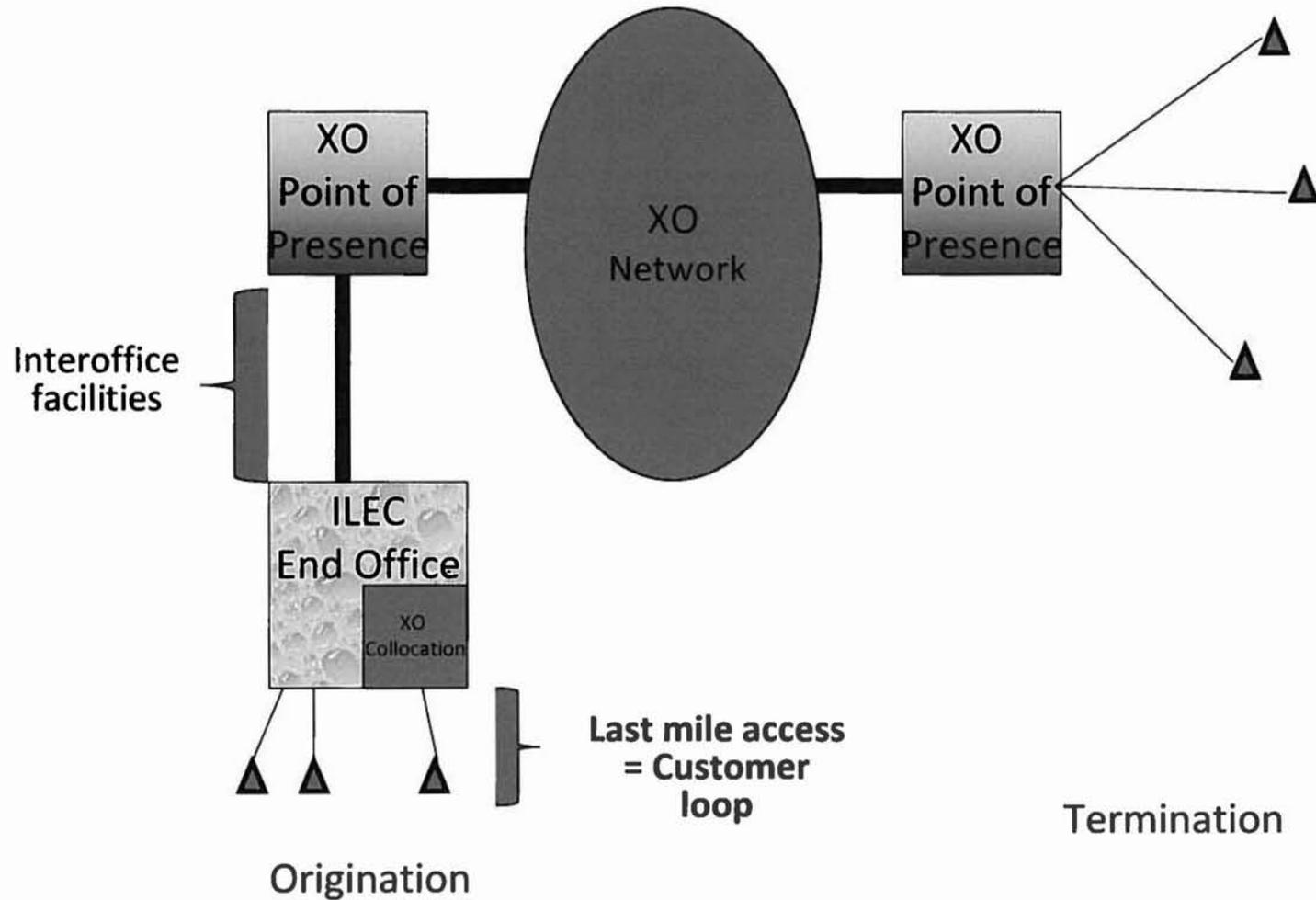
LEGEND

● Core IP Node	▮ Media Gateway	Ⓜ MPLS IRVPN PoP	Ⓜ Local Voice Footprint
● Metro IP Node	● Longhaul Termination (All Bandwidths)	— Nx10Gigabit Ethernet	▫ Broadband/Wireless Spectrum
○ Core IP Node w/ Peering	● Longhaul Termination (OC-48 & Above Only)	— Inter-City Long Haul Network	○ XO Market

- **Competition Policy is Key**
- **Robust Competition Advances FCC Broadband Goals:**
 - **Promotes Broadband Entry - Now**
 - **Promotes Broadband Penetration - Now**
 - **Encourages Innovation**
 - **Puts Downward Pressure on Prices**

***Greater Availability of Broadband =
Economic Development and Job Creation***

How XO Provisions Its Services



Vigorously Competitive Broadband Requires Cost-Effective Access to Last Mile Bottlenecks

- **Despite billions of dollars in investment, XO remains highly dependent upon the incumbent for last mile access**
 - **96% ILEC**
 - **3% alternative vendors**
 - **1% XO owned**
- **Existing facilities -- *Copper* -- could be used for more rapid and cost-effective deployment of Broadband**
 - **To all business customers**
 - **Many underserved residential customers**

Lack of Last Mile Options

Even wire centers with the largest number of competitors offer few last mile alternatives.

Wire Centers in Each MSA With Highest % of CLEC Lit Buildings	Commercial Buildings	% Commercial CLEC Lit Buildings
Boston WLHM WE	1,007	1.49%
New York NYCMNS	4,008	1.07%
Philadelphia PHLAP ALO	4,676	0.68%
Pittsburgh PITBP ADT	4,137	1.09%
Providence PRVDRIWA	8,129	0.97%
Virginia Beach NRL V ABL	1,654	4.29%

Copper: Key to Robust, Cost-Effective Broadband Deployment



- **Copper Plant: Nationwide, Ubiquitous, Ready-to-go, and Cost-Effective**
 - Far greater reach and more cost-effective than fiber
- **Advances in copper technology have enabled Ethernet deployment**
 - Up to 50 Mbps today, possibly 100 Mbps+ in future
- **Needless Retirement of Copper Plant: A Major Obstacle to Quick and Robust Broadband Deployment by Competitors**

- **January 2007: XO and other CLECs filed detailed proposal for reforming the rules governing copper plant retirement**
- **New rules would make copper retirement process transparent and prevent premature retirement of an invaluable asset**
- **The Commission should act now to reform its copper retirement rules**

National Broadband Plan Should Recognize:

- **Vital Importance of Special Access Reform to Affordable Broadband Service**
- **Key Role of Copper Plant in Achieving Wider Broadband Deployment**